

## SPAIN

# Recent Developments and Market Diagnosis

*The run up: rumors, rush and back tax payments*

By Cristina Romero de Alba

**The Rumor:** Beginning in late December 2012, the Spanish General Directorate of Gaming Regulation and Supervision (*Dirección General de Ordenación del Juego* (“DGOJ”), planned to approve licenses following an unusually speedy legislative and administrative procedure with an unceasing trickle of papers, guidelines, and regulations released almost every week. The reality: The DGOJ never met the ambitious time frame.

Then it was mid-March, then late May... until news of the Tax Authorities, specifically, the ONIF<sup>1</sup> came out.

**Next:** Bwin, Sportingbet, Betfair, Pokerstars, 888 and others had filed self-assessments regarding gaming back taxes and suddenly paid several millions of Euros to the Spanish Tax Office. These actions were quite surprising, considering that, just a few months prior, those very same operators had stated that their tax obligations were clear and up to date when applying for licenses for their newly created entities. The “new” entities were nonetheless 100 percent owned by the parent companies and were, naturally, intended to carry on with their Spanish business.

Even so, it seems that the competent authorities, both the DGOJ and the Tax Office, are still keeping an eye on this issue and that the last word has not been spoken.



In addition, in late March both the Director and the Deputy Director of the DGOJ were removed from office. Mr. Enrique Alejo, the new General Director and Mr. Carlos Hernández, the new Deputy Director for Gaming Regulation, seem to be grasping the market very quickly. They have already announced that they intend to conduct a thorough review and reform of current regulations. In particular, they will review the licensing process and the regulation of advertising and sponsorship, in order to streamline market dynamics to preserve fair competition in the newly regulated environment and to start a strict clampdown on illegal operators.

**And, finally, it was the 1st of June and it will (predictably) be the 1st October 2012**

On 31st May, the DGOJ issued a regulatory statement to clarify that the transfer of any kind of funds, deposits, client data, user accounts or registration details of Spanish clients from previously operated “.com” websites to the newly created “.es” domains continued to be strictly prohibited. As a

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consequence, any operator which conducted unlicensed business in Spain in prior years was banned from using the data gathered from Spanish customers during that period. The DGOJ is now keeping a close watch on this particular issue, as it seems that these regulations may not have been fully respected.

Finally, big news came out on the 1st of June 2012: federal *igaming* licenses were awarded by the DGOJ, although on a conditional basis only, to a total of fifty-four licensees (out of fifty-nine initial applicants). This group is essentially composed of land-based operators, the big online operators, and media and telecom groups.

By the 1st October 2012, these 54 provisionally licensed operators will have to present the DGOJ with definitive verification and certification reports from authorized gaming labs. This regulatory obligation is turning into a Herculean task (and that's probably an understatement).

Although licenses were officially handed out on June 1, the date operations could start was June 5, and the new sanctions and infringements regulatory came into force on June 15. This three-step introduction of the new regulatory arena is, to say the least, dubious. It will, in all likelihood, lead to the DGOJ facing many problems, and operators eventually

being sanctioned for their activities during this period.

### Publication of the 2011 Report of the DGOJ

The DGOJ issued its annual report on the gaming industry for the year 2011 in mid-July 2012. Key takeaways are: total amounts wagered EUR 26,585 million, down 2.8 percent from 2010, total GGR EUR 9,244 million, down 1.4 percent from 2010. Online gaming still makes up less than 10 percent of the total gaming market, and the products of SELAE (the Spanish lottery) continue to have the biggest chunk of the market.

2011 was a year of reshaping gaming offerings and operators, which was caused by the drop in disposable income of consumers and the influx of online gaming opportunities during the past years. According to the DGOJ, the influx of online gaming has substantially impacted the market share of land based operators.

### EuroVegas – a year of eyes on Mr. Adelson

Time has passed, and we can all recall those first days of hope that the billion Euro forecast and massive developments would come to fruition and lead to positive growth in the Spanish employment rate, tourism, real estate and entertainment industries. A year later, none of these projections have become a reality or are even well on track to become one.

Today, the emerging story

regarding the potential location of the so-called EuroVegas destination resort complex in Spain is taking its umpteenth turn. The location is, apparently, being decided “imminently”, despite the latest news pointing towards a late September announcement. Last June 25, representatives of Las Vegas Sands (“LVS”) visited four prospective sites in both Madrid and Barcelona. Led by Michael Leven, the LVS delegation stressed the need for the financing of the project, which would require approximately EUR 5 billion credit (around 65 percent of the overall cost) to be syndicated amongst Spanish and Spain-based international banks. Current turmoil in the European financial markets and the Euro, especially as far as Spain is concerned, seems too big a hurdle to overcome. Nonetheless, it seems that LVS has not changed its mind. The recent financial rescue of the Autonomous Region of Catalonia and the enduring efforts of Esperanza Aguirre, President of the Region of Madrid, to partially lift the smoking ban may have tilted the scale slightly over to Madrid's side. Or maybe not? Too many unknowns are on the table and the credibility of the project is, yet again, being called into question.

### Let's not forget the Regions

The Spanish Autonomous Regions, which are individually empowered by the Constitution to regulate and supervise gaming within their respective territories, have launched themselves into a modernization process to keep pace



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with evolving technology and demands from the industry. A landmark ruling issued by the Spanish Constitutional Court in May 2012 opened the door to the possibility of inter-connecting gaming offering among several Regions. This ruling has provided the ultimate boost to the Regions' aim to re-vitalize the sector and push towards a regulatory landscape that will allow the development of convergent operations (online and offline) and the establishment of a modern, competitive, responsible and transparent gaming offering.

### Where are we headed?

It seems a bit early for an accurate market diagnosis, but currently, only twenty-six of the licensed operators have been able to launch operations on ".es" websites.

The launch of only twenty-six ".es" websites is a fair indicator of the uneven competitive conditions that have resulted from the rush towards licensing started by the prior administration and the many flaws in the current regulations. It is obvious that those operators that were unlicensed and present in the Spanish market over the last several years have developed a better, and probably unfair, competitive advantage. The advantages will ultimately be assessed by the courts, the DGOJ, and relevant competition authorities in the coming months.

Operators who had refrained from carrying on unlicensed online gaming in Spain to date are now faced with the reality that they are, from a technical, marketing and financial perspective, unable to match current competitive conditions in the short term, if ever.

On the regulatory side, social gaming and regulation of exchange betting are the two hot topics that are next in line for discussion. However, the discussions of these subjects appear to be more aspirational than a short term reality. As the new competitive environment unfolds, opportunities will unquestionably arise for investors looking for cheap licenses, mergers and acquisition opportunities, or vertical integration opportunities. The new investors have a vision for testing Spain as the bridge to a much bigger market: Latin America. ♣

<sup>1</sup> The ONIF is the department in charge of fraud investigation. The ONIF has been conducting inquiries on online operators that had been conducting unlicensed business in Spain over the last years.



## IMGL CONFERENCES

**2012 Autumn Conference**  
OCTOBER 10-12, 2012  
Sofitel St James  
London, United Kingdom

**2013 Spring Conference**  
TO BE ANNOUNCED

**2013 Autumn Conference**  
OCTOBER 1-3, 2013



SEPTEMBER 29 - OCTOBER 1, 2012  
co-located at  
Le Grand Hotel, Oslo, Norway

All gaming professionals are welcome to attend.  
A registration fee applies.

## 2012 EVENTS



**IMGL Member Reception**  
OCTOBER 2, 2012  
5:00 - 7:00 p.m.  
La Cave, Wynn Las Vegas  
Las Vegas, Nevada  
Strictly by invitation for members  
and their guests.  
Visit us at Exhibit Booth #3917



**Welcome Reception**  
OCTOBER 10, 2012  
Sofitel St. James  
London, United Kingdom  
All female gaming professionals  
are welcome to attend.



**Luncheon**  
OCTOBER 12, 2012  
Included in the London conference  
registration fee. Event tickets available  
for purchase.



**IMGL Member Reception**  
OCTOBER 16, 2012  
7:00 - 9:00 p.m.  
Opium Barcelona  
Barcelona, Spain  
Strictly by invitation only for  
IMGL members and guests of  
GamingLaw.eu  
Co-sponsored by  
GamingLaw.eu

## 2013 EVENTS



**IMGL Reception**  
FEBRUARY 3, 2013  
Pool Area, Haymarket Hotel  
London, UK  
Co-sponsored by  
Jeffrey Green Russell



**IMGL Reception**  
MAY 21, 2013  
Portofino Restaurant  
The Venetian, Macau  
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